

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

In the matter of:

Cornerstone Wealth Management, LLC, an
Arizona limited liability company,

Nathaniel S. Barnhart (CRD # 1898299) and
Lisa Renee Wilson Barnhart, husband and
wife,

AE Wealth Management, LLC (CRD
#282580), a Kansas limited liability company,

Christopher Spence Cox (CRD #5639015) and
Beth Cox, husband and wife,

William Andrew Smith (CRD #5638821) and
Kimberly Ann Smith, husband and wife,

Smith & Cox, LLC (CRD #149088) an
Arizona limited liability company,

Respondents.

DOCKET NO. S-21104A-20-0103

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Cornerstone Wealth Management, LLC, Nathaniel S. Barnhart (CRD #1898299), AE Wealth Management, LLC (CRD #282580), Christopher Spence Cox (CRD #5639015), William Andrew Smith (CRD #5638821) and Smith & Cox, LLC (CRD #149088) are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and A.R.S. § 44-3101, *et*

1 *seq.*, the Investment Management Act (“IM Act”) and that the public welfare requires immediate
2 action.

3 The Division also alleges that Nathaniel S. Barnhart, Christopher Spence Cox and William
4 Andrew Smith are persons controlling Cornerstone Wealth Management, LLC within the meaning
5 of A.R.S. § 44-1999(B), so that those individuals are jointly and severally liable under A.R.S. § 44-
6 1999(B) to the same extent as Cornerstone Wealth Management, LLC for its violations of the
7 antifraud provisions of the Securities Act.

8 The Division also alleges that Christopher Spence Cox and William Andrew Smith are
9 persons controlling Smith & Cox, LLC, within the meaning of A.R.S. § 44-1999(B), so that those
10 individuals are jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as Smith &
11 Cox, LLC for its violations of the antifraud provisions of the Securities Act.

12 I.

13 JURISDICTION

14 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
15 Arizona Constitution, the Securities Act and the IM Act.

16 II.

17 RESPONDENTS

18 2. Respondent Cornerstone Wealth Management, LLC (“Cornerstone”) was organized
19 on July 3, 2019, as a member-managed Arizona limited liability company.

20 3. Respondent Nathaniel S. Barnhart (“Barnhart” or “Nate Barnhart”) (CRD
21 #1898299) has been licensed by the Commission as an investment adviser representative for AE
22 Wealth Management, LLC since October 11, 2019. Prior to that date, Barnhart was licensed by
23 the Commission as an investment adviser representative for Secure Investment Management, LLC,
24 and as a salesman for several securities dealers.

25 4. Barnhart is the sole member of Cornerstone according to Cornerstone’s Articles of
26 Organization on file with the Commission.

1 5. AE Wealth Management, LLC (“AE Wealth”) (CRD #282580) is a Kansas limited
2 liability company with its principal place of business in Topeka, Kansas. On February 17, 2016, AE
3 Wealth became registered as an investment adviser with the United States Securities and Exchange
4 Commission.

5 6. From October 24, 1997, until October 1, 2002, Respondent Christopher Spence Cox
6 (“Cox” or “Chris Cox”) (CRD #5639015) was a licensed securities salesman in South Dakota,
7 Nebraska, Colorado, Minnesota and Iowa. Since September 21, 2007, Cox has been a licensed
8 Arizona insurance producer (License #718551).

9 7. From July 13, 2009, through the present, Respondent William Andrew Smith (“Smith”
10 or “Andy Smith”) (CRD #5638821) has been licensed by the Commission as an investment adviser
11 representative.

12 8. Respondent Smith & Cox, LLC (“Smith & Cox”) (CRD #149088) was organized on
13 January 15, 2009, as an Arizona limited liability company. From July 13, 2009, through the present,
14 Smith & Cox has been licensed by the Commission as an investment adviser.

15 9. Since at least January 29, 2009, Andy Smith and Chris Cox have been the managing
16 members of Smith & Cox, and Andy Smith has been Smith & Cox’s chief compliance officer.

17 10. Cornerstone, Nate Barnhart, AE Wealth, Chris Cox, Andy Smith and Smith & Cox
18 may be referred to collectively as “Respondents.”

19 11. Lisa Renee Wilson Barnhart was at all relevant times the spouse of Nate Barnhart.

20 12. Beth Cox was at all relevant times the spouse of Chris Cox.

21 13. Kimberly Ann Smith was at all relevant times the spouse of Andy Smith.

22 14. Lisa Renee Wilson Barnhart, Beth Cox and Kimberly Ann Smith may be referred
23 to collectively as “Respondent Spouses.” Respondent Spouses are joined in this action under A.R.S.
24 § 44-2031(C).

FACTS

24. As the managing member of Smith & Cox, LLC and its chief compliance officer, Smith has at all times been an advisory affiliate of Smith & Cox, LLC.

1 25. Form ADV states: “We use this information to determine whether to grant your
2 application for registration, to decide whether to revoke your registration or to place limitations on
3 your activities as an investment adviser....”

4 26. Form U4 is filed with the Division by an applicant seeking to become licensed as an
5 investment adviser representative. The Division reviews Form U4 in deciding whether to grant an
6 applicant’s license and whether to seek to suspend or revoke an investment adviser representative’s
7 license.

8 27. The Form U4 Andy Smith and Smith & Cox filed on January 29, 2009, asked: “Do
9 you have any unsatisfied judgments or liens against you?” Andy Smith and Smith & Cox answered
10 “No.”

11 28. That answer was false, inaccurate and misleading because Andy Smith has never
12 satisfied the 2006 \$93,455 Judgment he owes to an investor in Indiana.

13 29. The Form U4 filed on January 29, 2009, required Andy Smith and Smith & Cox to
14 “agree to update this form by causing an amendment to be filed on a timely basis whenever changes
15 occur to answers previously reported.” Similarly, the Form ADV Andy Smith and Smith & Cox
16 filed that date directed: “You must keep this form updated by filing periodic amendments.”

17 30. On July 13, 2009, the Division approved Smith & Cox’s and Andy Smith’s
18 applications, and they became licensed as an investment adviser (“IA”) and an investment adviser
19 representative (“IAR”), respectively.

20 31. Pursuant to the IM Act, to retain their licenses, Andy Smith and Smith & Cox were
21 required to file “A supplemental statement showing any material changes in the facts contained in the
22 original application for licensure as supplemented or amended as the changes occur or within thirty
23 days after the change.” A.R.S. § 44-3159(A)(1).

24 32. On June 23, 2009, and again on July 25, 2011, Andy Smith, on behalf of Smith &
25 Cox filed Amendments to his Form U4. The U4 Amendments both asked: “Do you have any
26 unsatisfied judgments or liens against you?” Each time, Andy Smith and Smith & Cox answered

1 “No.” Those answers were false, inaccurate and misleading because Andy Smith has never satisfied
2 the 2006 Unpaid Judgment he owes to an investor.

3 33. Andy Smith and Smith & Cox have never amended Smith’s Form U4 to disclose the
4 2006 Unpaid Judgment, which A.R.S. § 44-3159 required them to do.

5 34. On June 25, 2013, the Internal Review Service (“I.R.S.”) recorded a Notice of Federal
6 Tax Lien in Pima County, Arizona against Andy Smith for \$125,079 in unpaid income taxes from
7 2007 and 2008 (“the 2013 I.R.S. Lien”).

8 35. Smith has never satisfied the 2013 I.R.S. Lien.

9 36. On August 2, 2016, the I.R.S. recorded another lien against Andy Smith for \$9,594
10 in unpaid income taxes from 2014 (“the 2016 I.R.S. Lien”). Smith has never satisfied that \$9,594
11 lien.

12 37. On August 29, 2017, the I.R.S. recorded another lien against Andy Smith for \$43,602
13 in unpaid income taxes from 2009 (“the 2017 I.R.S. Lien”). Smith has never satisfied that \$43,602
14 lien.

15 38. The I.R.S.’s 2013, 2016 and 2017 Liens against Smith collectively total \$178,275.

16
17 **B. The Pending Enforcement Action for Securities Fraud and Investment Advisory
18 Fraud and to Revoke Smith’s and Smith & Cox’s Licenses.**

19 39. On March 30, 2018, the Division filed an enforcement action against Andy Smith,
20 Chris Cox and Smith & Cox, LLC (the “2018 Enforcement Action”).

21 40. The 2018 Enforcement Action alleges that Andy Smith and Smith & Cox committed
22 numerous violations of the Securities Act and IM Act, including those statutes’ antifraud provisions
23 by, among other things:

- 24 a) Selling unregistered securities in violation of A.R.S. § 44-1841;
25 b) Selling securities while not registered as dealers or salesmen in violation of
26 A.R.S. § 44-1842;

c) Committing securities fraud and investment advisory fraud in violation of A.R.S. §§ 44-1991 and 44-3241 by selling U.S. military veterans' retirement and disability benefits payments to investors even though federal law expressly prohibits such sales; and

d) Committing securities fraud and investment advisory fraud in violation of A.R.S. §§ 44-1991 and 44-3241 by failing to disclose to investors the I.R.S.'s 2013 Lien against Smith.

41. The 2018 Enforcement Action alleges that Chris Cox should be held liable as a controlling person of Smith & Cox, LLC for its securities fraud in violation of A.R.S. § 44-1991.

42. The 2018 Enforcement Action requests the Commission to revoke Smith & Cox, LLC's and Andy Smith's licenses as an investment adviser and investment adviser representative, respectively.

43. The 2018 Enforcement Action proceeded to hearing in June 2019. Andy Smith, Chris Cox and Smith & Cox, LLC appeared, defended and were represented by counsel.

44. The parties completed their post-hearing briefing on January 27, 2020. The 2018 Enforcement Action has been submitted for decision and remains pending.

C. Respondents Are Soliciting Investors Without Disclosing Negative Material Facts About Themselves.

45. The administrative hearing in the 2018 Enforcement Action against Andy Smith, Chris Cox and Smith & Cox, LLC took place from June 17th to June 27th, 2019.

46. The next week, on July 3rd, 2019, Andy Smith, Chris Cox and Nate Barnhart formed Cornerstone Wealth Management, LLC with Barnhart listed as the sole member. Cornerstone's filings with the Commission's Corporations Division, which investors and other members of the public can view on-line, do not reference Andy Smith or Chris Cox.

47. Respondents are distributing to potential investors what Respondents characterize as an "information book that really helps tell people our story and who we are."

1 48. The cover page of Respondents' information book is titled with the logo,
2 "CORNERSTONE WEALTH MANAGEMENT: BUILD | PROTECT | PRESERVE". The bottom
3 of that page states in a smaller font: "Nate Barnhart offers investment advisory services through AE
4 Wealth Management, LLC (AEWM). AEWM and Cornerstone Wealth Management, LLC are not
5 affiliated companies. William Andrew Smith offers investment advisory services through Smith &
6 Cox. AEWM and Smith & Cox are not affiliated companies."

7 49. Respondents' information book invites prospective investors to "Meet Your
8 Cornerstone Wealth Management Team." Underneath that statement and the Cornerstone logo are
9 photographs of Cox, who is identified as "Financial Professional"; Smith, who is identified as
10 "Director of Operations"; and Barnhart, who is identified as "Investment Adviser Representative".

11 50. Respondents' information book represents that Cox, Barnhart and Smith "have over
12 75 years of combined experience in the financial service industry."

13 51. Respondents' representation regarding their financial experience is incomplete and
14 misleading because Respondents do not disclose the following material facts about their collective
15 financial experience: (i) the 2006 Unpaid Judgment Smith owes an investor in Indiana; (ii) the 2013,
16 2016 and 2017 I.R.S. Liens against Smith for \$178,275 in unpaid taxes; or (iii) the 2018 Enforcement
17 Action for securities fraud, investment advisory fraud, and revocation of Smiths' and Smith & Cox,
18 LLC's licenses.

19 52. In a section captioned "Who Are We?", Respondents represent: "We are Southern
20 Arizona's premier retirement planning firm... Our clients value our financial investment strategies,
21 which are based on:

- 22 • Safety of principal
- 23 • A reasonable rate of return
- 24 • Keeping things simple
- 25 • Reasonable fees."
- 26

53. Respondents' representations about their investment strategies and that they "are Southern Arizona's premier retirement planning firm" are incomplete and misleading because Respondents omit several material facts that the evidence in the hearing for the 2018 Enforcement Action revealed, including:

a) Andy Smith and Smith & Cox, LLC sold twenty-one (21) of their retiree-clients highly risky income stream investments based on military veterans' retirement and disability benefits payments;

b) The income stream investments were so complicated that Andy Smith could not explain who several of the middlemen were or what value they added;

c) Andy Smith and Smith & Cox, LLC did not inform their clients that they received a five percent (5%) fee for each sale of the income stream investments; and

d) Instead of receiving a reasonable return, the clients who testified at the hearing have each lost most of their principal, which constituted large portions of their retirement savings.

D. Respondents are Exploiting Retirees' Fear About the Coronavirus Pandemic.

54. On approximately April 1, 2020, Respondents caused a flier to be inserted into newspapers that are distributed to retirees in Pima County, Arizona. The flier invites the reader to "Join Cornerstone For A Brief Informational Presentation From The Comfort Of Your Home At CORNERSTONEWMAZ.COM".

55. Respondents' website has a tab that states: "CORONAVIRUS VIDEO." <https://cornerstonewmaz.com/> (last visited April 28, 2020).

56. The "CORONAVIRUS VIDEO" begins with Chris Cox stating, "You're probably wondering what's gonna happen in this economy and world in this unprecedented time." The video continues:

You're here today because of this flier that was in your newspaper. We have some important things to talk about today with the world, the economy,

1 where we are at, what's taking place. And we want you to know more
2 specifically about Cornerstone Wealth Management, who we are and what
3 we're doing to help navigate our clients through an unprecedented time right
4 now.

5 The first thing I want to do is help you understand a little bit more about
6 Cornerstone Wealth Management and who we are. My business partners, Andy
7 Smith and Nate Barnhart, we've each been in the business now for 25 years.
8 So we have over seventy-five (75) years of combined experience.

9 When people say, "What makes Cornerstone different than the other people
10 out there?" There's all kinds of people in our industry that would love to help
11 you with your money. Well, we're a relationship-based firm. Ninety-five
12 percent (95%) of our clients are retirees. So they are in the distribution phase
13 of their life. We want to focus on being as responsible as we can with the
14 different investment vehicles that we talk to our clients about. But we want to
15 protect and defend what you've worked your lifetime to accumulate.

16 57. Cox emphasizes during the video: "It has never been more important than it is today
17 to have the right people on your team."

18 58. Cox's representations that he, Barnhart and Smith "have over seventy-five (75) years
19 of combined experience" and are "the right people [to have] on your team" are incomplete and
20 misleading because nowhere in the video or on their website do Respondents disclose the 2006
21 Unpaid Judgment against Smith, the three I.R.S. Liens against Smith for \$178,275 in unpaid taxes,
22 or the pending 2018 Enforcement Action for securities fraud, investment advisory fraud, and
23 revocation of Smiths' and Smith & Cox, LLC's licenses.

24 59. Respondents' video continues to a portion entitled, "CORONAVIRUS: WILL IT
25 INFECT YOUR RETIREMENT?" That portion begins with this photograph of a man wearing an
26 N95-type respirator, goggles and a HazMat suit:



60. The video quotes news outlets reporting, “Every continent except Antarctica has reported coronavirus cases,” “Israel says anyone entering the country must self-quarantine for 14 days,” “CDC urges at-risk Americans to ‘take action’ by stocking up on food and medicine for coronavirus,” “Dow falls 2,100 points,” and “New York Stock Exchange trips circuit breaker.”

61. Respondents’ video states, “There are three things everyone should be doing right now.” They are: “(1) Risk exposure review, (2) Retirement income analysis, [and] (3) Holistic financial plan.”

62. The video concludes by inviting the viewer “to visit with us one-on-one to discuss your specific circumstance in a private, comfortable setting. There is no obligation to you for this visit. At this visit you may be provided with information regarding the purchase of insurance or investment products or establishing an advisory relationship.”

E. Respondents’ Fraudulent Omissions and Unethical Conduct Directed at a Smith & Cox Client.

63. In 2014, a retiree referred to herein as “Investor One” became an investment advisory client of Smith & Cox, LLC and Andy Smith when they sold him income stream investments. Investor One has remained an investment advisory client of Smith & Cox, LLC and Smith.

1 64. As Investor One's investment advisor and investment advisor representative, Smith
2 & Cox, LLC and Andy Smith owe him "an affirmative duty of utmost good faith, and full and fair
3 disclosure of all material facts...." *S.E.C. v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,
4 194 (1963).

5 65. The 2006 Unpaid Judgment, the I.R.S.'s 2013, 2016 and 2017 Liens, and the pending
6 2018 Enforcement Action seeking to revoke Smith & Cox, LLC's and Andy Smith's licenses are
7 material facts that Respondents are required to disclose to Investor One and any of their other clients
8 in connection with any transaction within or from Arizona involving the provision of investment
9 advisory services.

10 66. Neither Andy Smith, nor Chris Cox, nor anyone else at Smith & Cox, LLC has ever
11 disclosed to Investor One: (i) the 2006 Unpaid Judgment Smith owes an investor in Indiana; (ii) the
12 2013, 2016 and 2017 I.R.S. Liens against Smith for \$178,275 in unpaid taxes; or (iii) the 2018
13 Enforcement Action for securities fraud, investment advisory fraud, and revocation of Smiths' and
14 Smith & Cox, LLC's licenses.

15 67. In late March or early April 2020, Respondents sent Investor One several documents
16 in a folder displaying a large "Cornerstone Wealth Management" logo. Respondents included
17 Barnhart's "Cornerstone Wealth Management" business card stating his title as "Investment
18 Advisor."

19 68. Respondents included a document titled "AE Wealth Management, LLC Interval
20 Fund Approval Form."

21 69. The AE Wealth Management, LLC Interval Fund Approval Form states, "Name of
22 Advisor: Nate Barnhart."

23 70. Investor One has never met, spoken to or otherwise communicated with Barnhart.
24 Investor One believes his investment advisers are Andy Smith and Smith & Cox, LLC.

25 71. The AE Wealth Management, LLC Interval Fund Approval Form's lines for "Name
26 of Registered Investment Advisor," "Age of Client," "Total Net Worth of Client (not including

primary residence),” “Liquid Net Worth of Client (cash, stocks, bonds, etc.),” and “Other Non-Traded/Illiquid Investments Owned by Client” were all left blank.

72. Investor One never agreed to purchase an investment in the AE Wealth Management, LLC Interval Fund. Investor One does not know what that investment is.

73. Respondents have never discussed the AE Wealth Management, LLC Interval Fund with Investor One. They have never provided him with a Prospectus or any other information concerning this investment.

74. The AE Wealth Management, LLC Interval Fund Approval Form asks or states the following:

- It asks what “Other Non-Traded/Illiquid Investments” Investor One owns.
- It states the name of Investor One’s “Advisor” as Nate Barnhart, who is an investment adviser representative.
- It has a block “for use by AEWM Compliance Only,” for AE Wealth’s compliance department to approve or deny the sale of the Interval Fund to Investor One.

75. The AE Wealth Management, LLC Interval Fund Approval Form contains an “Acknowledgment of Certain Risks,” which states:

By signing below, you acknowledge that there are risks associated with this investment, including but not limited to the following:

- You should not invest unless you have an adequate means of providing for your current needs and personal contingencies and have no need for liquidity in this investment.
- This fund has limited liquidity, as outlined in the prospectus. Limited liquidity is permitted by the fund on a quarterly basis. Based on investor instruction, orders may be taken for redemption at any time. Execution of these instructions will be based on the availability of the funds to liquidate during that calendar quarter, and subject to redemption rules outlined in the prospectus.

- Purchases made in a managed account are load-waived and are subject to the fees and expenses described in the Managed Account Client Agreement.

76. Respondents printed Investor One's name in the signature block with a yellow arrow indicating for Investor One to sign the AE Wealth Management, LLC Interval Fund Approval Form immediately below a certification falsely stating:

Client certifies that: (1) Client has received a copy of the Prospectus for the investment named herein, (2) the information provided on this form is correct and accurate as of the date this form is signed by Client, and (3) Client acknowledges that client has read the above stated risks. (Bold in original).

77. Had he signed this, Investor One's certification would have been false because Respondents never provided him with the Prospectus, several items of suitability information regarding his net worth and other investment holdings were blank, and Respondents never discussed this investment with him, let alone informed him of its risks.

78. Respondents also included a form document titled "AE Wealth Management, LLC Managed Account Client Agreement" (the "AE Wealth Client Agreement").

79. The AE Wealth Client Agreement purports to make Investor One an investment advisory client of AE Wealth Management, LLC.

80. Investor One never agreed to engage AE Wealth as his investment advisory firm. Investor One is unfamiliar with AE Wealth.

81. The AE Wealth Client Agreement attached as an addendum a "Client Profile And Suitability Questionnaire" ("Suitability Questionnaire").

82. The Suitability Questionnaire falsely identified Investor One's investment adviser representative as Nate Barnhart.

83. When Investor One received the Suitability Questionnaire, one of the Respondents or their employee had completed the Suitability Questionnaire for him, except for the signature.

84. The Suitability Questionnaire listed Investor One's name, address, phone number, date of birth, social security number, household income, risk tolerance, net worth and liquid net worth.

85. A.A.C. R14-6-203(13) prohibits Andy Smith and Smith & Cox from “disclosing the identity, affairs, or investments of a client to any 3rd party unless ... consented to by the client.”

86. Investor One did not consent to Andy Smith and Smith & Cox disclosing to Nate Barnhart and AE Wealth information concerning his identity, income, risk tolerance, net worth and liquid net worth. By disclosing this information to Barnhart, Andy Smith and Smith & Cox engaged in a dishonest and unethical practice in the securities industry within the meaning of A.R.S. § 44-3201(A)(13) and A.A.C. R14-6-203(13).

87. The information Respondents listed for Investor One's risk tolerance, net worth and liquid net worth is outdated and inaccurate.

88. Neither Andy Smith, nor Chris Cox nor Smith & Cox has discussed Investor One's risk tolerance, net worth and liquid net worth with him in approximately four (4) years.

89. Respondents affixed a yellow arrow directing Investor One to “Sign Here” below a statement falsely attesting that the information in the Suitability Questionnaire “is a reasonable picture of [Investor One’s] financial situation, investment goals, objectives and risk tolerance.”

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer and Sale of Unregistered Securities)

90. Since at least April 6, 2020, Respondents have been offering or selling securities in the form of interests in the AE Wealth Management, LLC Interval Fund, within or from Arizona.

91. The securities referred to above are not registered pursuant to Articles 6 or 7 of the Securities Act.

92. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

93. Since at least April 6, 2020, Respondents have been offering or selling securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

94. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

95. In connection with the offer or sale of securities within or from Arizona, Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the statements made not misleading in light of the circumstances under which they are made; or (iii) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Respondents offered to sell Investor One an investment in the AE Wealth Management, LLC Interval Fund without disclosing: (i) the 2006 Unpaid Judgment Smith owes an investor in Indiana; (ii) the 2013, 2016 and 2017 I.R.S. Liens against Smith for \$178,275 in unpaid taxes; and (iii) the 2018 Enforcement Action for alleged securities fraud, investment advisory fraud, and revocation of Smiths' and Smith & Cox, LLC's licenses;

b) Respondents offered to sell Investor One an investment in the AE Wealth Management, LLC Interval Fund without informing him of the nature of the investment or its risks;

c) Respondents offered to sell Investor One an investment in the AE Wealth Management, LLC Interval Fund by misusing a blank form for him to sign that would falsely

1 certify that: (i) he had received a copy of the Prospectus; and (ii) the information regarding his net
2 worth, other investment holdings and acceptance of the investment's risks was "correct and
3 accurate"; and

4 d) Respondents offered to sell Investor One an investment in the AE Wealth
5 Management, LLC Interval Fund by misusing the Suitability Questionnaire that (i) falsely
6 identified his investment adviser representative as Nate Barnhart and (ii) attempted to get Investor
7 One to attest to inaccurate information regarding his risk tolerance, net worth and liquid net worth.

8 96. This conduct violates A.R.S. § 44-1991.

9 **VII.**

10 **CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

11 97. From at least July 3, 2019, through the present, Barnhart, Cox and Smith have been
12 or held themselves out as the principals of Cornerstone.

13 98. From at least July 3, 2019, through the present, Barnhart, Cox and Smith directly or
14 indirectly controlled Cornerstone within the meaning of A.R.S. § 44-1999. Therefore, Barnhart,
15 Cox and Smith are jointly and severally liable to the same extent as Cornerstone for its violations
16 of A.R.S. § 44-1991 from at least July 3, 2019, through the present.

17 99. From at least January 15, 2009, through the present, Cox and Smith have been or
18 held themselves out as the principals and managing members of Smith & Cox, LLC.

19 100. From at least January 15, 2009, through the present, Cox and Smith directly or
20 indirectly controlled Smith & Cox, LLC within the meaning of A.R.S. § 44-1999. Therefore, Cox
21 and Smith are jointly and severally liable to the same extent as Smith & Cox, LLC for its violations
22 of A.R.S. § 44-1991 from at least January 15, 2009, through the present.

VIII.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the provision of investment advisory services)

101. Respondents are engaging in a transaction or transactions within or from Arizona involving the provision of investment advisory services in which Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the statements made not misleading in light of the circumstances under which they are made; (iii) misrepresenting professional qualifications with the intent that the client rely on the misrepresentation; or (iv) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit. Respondents' conduct includes, but is not limited to, the following:

a) Andy Smith, Chris Cox and Smith & Cox, LLC have failed to disclose to Investor One, and on information and belief to their other investment advisory clients: (i) the 2006 Unpaid Judgment Smith owes an investor in Indiana; (ii) the 2013, 2016 and 2017 I.R.S. Liens against Smith for \$178,275 in unpaid taxes; and (iii) the 2018 Enforcement Action for alleged securities fraud, investment advisory fraud, and revocation of Smiths' and Smith & Cox, LLC's licenses;

b) Respondents recommended that Investor One purchase an investment in the AE Wealth Management, LLC Interval Fund without informing him of the nature of the investment or its risks;

c) In the course of recommending that Investor One purchase an investment in the AE Wealth Management, LLC Interval Fund, Respondents sent him a blank form to sign that would falsely certify that: (i) he had received a copy of the Prospectus; and (ii) the information regarding his net worth, other investment holdings and acceptance of the investment's risks was "correct and accurate"; and

1 d) In the course of recommending that Investor One purchase an investment in
2 the AE Wealth Management, LLC Interval Fund, Respondents attempted to get him to sign the
3 Suitability Questionnaire that (i) falsely identified his investment adviser representative as Nate
4 Barnhart and (ii) stated inaccurate information regarding his risk tolerance, net worth and liquid net
5 worth.

6 102. This conduct violates A.R.S. § 44-3241.

7 **IX.**

8 **REMEDIES PURSUANT TO A.R.S. § 44-3201**

9 **(Denial, Revocation, or Suspension of Investment Adviser or Investment Adviser**

10 **Representative License; Restitution, Penalties, or other Affirmative Action)**

11 103. Respondents Smith & Cox's and Smith's conduct is grounds to revoke these
12 Respondents' licenses as an investment adviser and investment adviser representative, respectively, with
13 the Commission pursuant to A.R.S. § 44-3201. Specifically, revocation of these Respondents' licenses
14 would be in the public interest, and these Respondents have: (i) violated A.R.S. § 44-3159(A)(1) by
15 failing to file supplemental statements showing material changes to the facts contained in their original
16 Form ADV and Form U4 applications for licensure; (ii) filed applications, supplements or amendments
17 to their licensure applications that are incomplete, inaccurate and/or misleading; (iii) committed
18 investment advisory fraud in violation of A.R.S. § 44-3241; and (iv) engaged in dishonest or unethical
19 practices in the securities industry within the meaning of A.R.S. §§ 44-3201(A)(13), and A.A.C.
20 R14-6-203(8) and R14-6-203(13). These are grounds for the Commission to revoke Smith & Cox's
21 and Smith's licenses pursuant to A.R.S. §§ 44-3201(A)(1), 44-3201(A)(3), 44-3201(A)(4) and 44-
22 3201(A)(13).

23 104. Smith & Cox's and Smith's conduct is grounds to assess restitution, penalties or take
24 other appropriate affirmative action pursuant to A.R.S. § 44-3201(B). Specifically, Smith & Cox and
25 Smith have engaged in dishonest or unethical practices in the securities industry within the meaning
26 of A.R.S. § 44-3201(A)(13), and A.A.C. R14-6-203(8) and R14-6-203(13).

105. Respondent Barnhart's conduct is grounds to revoke his license as an investment adviser representative with the Commission pursuant to A.R.S. § 44-3201. Specifically, revocation of Barnhart's license would be in the public interest, and he has committed investment advisory fraud in violation of A.R.S. § 44-3241. These are grounds for the Commission to revoke Barnhart's license pursuant to A.R.S. § 44-3201(A)(3).

X.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act and IM Act

THEREFORE, based on the above allegations, and because the Commission has determined that the public welfare requires immediate action,

IT IS ORDERED, pursuant to A.R.S. §§ 44-1972(C) and 44-3212(B) and A.A.C. R14-4-307, that Respondents, their agents, servants, employees, successors, assigns, and those persons in active concert or participation with Respondents CEASE AND DESIST from any violations of the Securities Act and the IM Act.

IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

IT IS FURTHER ORDERED that if a request for hearing is made, this Temporary Order shall remain effective from the date a hearing is requested until a decision is entered unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED that this Order shall be effective immediately.

XI.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act and the IM Act, pursuant to A.R.S. §§ 44-2032, 44-3292 and 44-3201;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. §§ 44-2032, 44-3292 and 44-3201;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order Respondents to pay the state of Arizona administrative penalties of up to one thousand dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

5. Order the revocation or suspension of Respondent Smith & Cox's license as an investment adviser pursuant to A.R.S. § 44-3201;

6. Order the revocation or suspension of Respondents Andy Smith's and Nate Barnhart's licenses as investment adviser representatives pursuant to A.R.S. § 44-3201;

7. Order that Respondents and Respondent Spouses be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action; and

8. Order any other relief that the Commission deems appropriate.

XII.

HEARING OPPORTUNITY

Each Respondent including Respondent Spouses may request a hearing pursuant to A.R.S. § 44-1972, 44-3212 and A.A.C. Rule 14-4-307. **If a Respondent or Respondent Spouse requests a hearing, the requesting respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,

1 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
2 **Order shall remain effective from the date a hearing is requested until a decision is entered.**

3 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order, with
4 written findings of fact and conclusions of law. A permanent Order may include ordering restitution,
5 assessing administrative penalties, or other action.

6 If a request for hearing is not timely made, the Division will request that the Commission make
7 permanent this Temporary Order, with written findings of fact and conclusions of law, which may
8 include ordering restitution, assessing administrative penalties, or other relief.

9 Persons with a disability may request a reasonable accommodation such as a sign language
10 interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck,
11 ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should
12 be made as early as possible to allow time to arrange the accommodation.

13 XIII.

14 ANSWER REQUIREMENT

15 Pursuant to A.A.C. R14-4-305, if a Respondent or Respondent Spouse requests a hearing,
16 the requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to
17 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007,
18 within 30 calendar days after the date of service of this Temporary Order and Notice. Filing
19 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
20 Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

21 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
22 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
23 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
24 addressed to James D. Burgess.

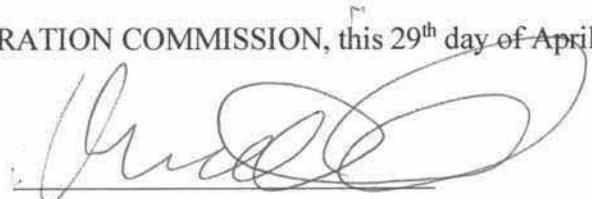
25 The Answer shall contain an admission or denial of each allegation in this Temporary Order
26 and Notice and the original signature of the answering respondent or the respondent's attorney. A

1 statement of a lack of sufficient knowledge or information shall be considered a denial of an
2 allegation. An allegation not denied shall be considered admitted.

3 When the answering respondent intends in good faith to deny only a part or a qualification
4 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
5 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

6 The officer presiding over the hearing may grant relief from the requirement to file an
7 Answer for good cause shown.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 29th day of April,
9 2020.

A handwritten signature in black ink, appearing to read 'Mark Dinell', is written over a horizontal line.

10 Mark Dinell
11 Director of Securities
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